

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|--------------------------------|---|------------|
| In the Matter of: |) | |
| |) | |
| TCT of Michigan, Inc. |) | |
| |) | CSR-5918-M |
| v. |) | |
| |) | |
| Charter Communications |) | |
| |) | |
| Request for Mandatory Carriage |) | |
| of Television Station WTLJ(TV) |) | |
| Muskegon, Michigan |) | |

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2002

Released: October 18, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. TCT of Michigan, Inc. ("TCT"), licensee of television broadcast station WTLJ(TV), Muskegon, Michigan ("WTLJ" or the "Station"), has filed a must carry complaint with the Commission pursuant to Sections 76.7 and 76.61(a) of the Commission's rules, claiming that Charter Communications ("Charter") has failed to commence carriage of WTLJ on Charter's cable system serving Coldwater, Michigan.¹ TCT requests that the Commission order Charter to commence carriage of WTLJ on channel 54, its over-the-air broadcast channel.² Charter filed an opposition to which TCT replied. For the reasons discussed below, we grant TCT's complaint.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order")*, commercial television broadcast stations, such as WTLJ, are entitled to assert mandatory carriage rights on cable systems located within the station's market.³ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.⁴ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹ Complaint at 3.

² *Id.* at 2.

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ Section 614(h)(1)(C) of the Communications Act, amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(e).

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁶ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.⁷ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁸

III. DISCUSSION

4. In support of its complaint, TCT states that WTLJ is licensed to Muskegon, Michigan, which is in the Grand Rapids-Kalamazoo-Battle Creek DMA. It states further that Charter operates a cable television system in Coldwater, Michigan that is also located in the Grand Rapids-Kalamazoo-Battle Creek DMA. TCT contends that, because WTLJ is located within the same DMA as the Charter system, it is entitled to mandatory carriage on Channel 54, its over-the-air broadcast channel.⁹ TCT maintains that, although the Station and Charter concluded that WTLJ delivered a good quality signal to the Coldwater headend, it is committed to acquire and install the equipment needed to provide Charter with a good quality signal to resolve any doubt.¹⁰ In its opposition, Charter argues that the instant Complaint should be denied because WTLJ does not deliver a signal of sufficient strength to Charter's principal headend.¹¹ In support, Charter points out that the test results TCT submitted in Exhibit 1 of its complaint show readings below the -45 dBm (+3.75 dbmv) threshold required by the Commission's rules.¹² Charter argues that its position is further supported by re-testing conducted by its engineers, which shows signal strength readings ranging from -72.13 dBm to -70.90 dBm.¹³ In its reply, TCT argues that the Commission's rules provide an alternative for a station to obtain mandatory carriage status when the station does not deliver an over-the-air signal of sufficient quality to a cable system's principal headend.¹⁴

5. We grant TCT's must carry Complaint conditioned upon WTLJ delivering a good quality signal to Charter's principal headend. In doing so, we note that under the Commission's rules, a station's failure to provide the requisite over-the-air signal quality to a cable system's principal headend will not foreclose its carriage on the cable television system if the station, at its own expense, provides the cable operator with the specialized equipment necessary to improve the station's signal to an acceptable quality.¹⁵ WTLJ has stated that it is committed to strengthening its signal by installing additional

⁵ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁸ *Must Carry Order*, 8 FCC Rcd at 2991.

⁹ Complaint at 2.

¹⁰ *Id.* and Exhibit 2

¹¹ Opposition at 1.

¹² *Id.* at 1-2.

¹³ Opposition at 2 and Exhibit A.

¹⁴ Reply at 2.

¹⁵ *Must Carry Order* at 2991; see also U.S.C. § 534(h)(1)(B)(iii).

equipment at Charter's principal headend. In that regard, the Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in its *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Clarification Order* ("Must Carry Clarification Order"), after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated:

This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements...¹⁶

Consistent with this clarification, the use of signal enhancement equipment as a means of providing a signal of sufficient must carry strength has been approved in numerous proceedings.¹⁷ By committing to provide the specialized equipment, WTLJ satisfies its obligation to bear the costs associated with delivering a good quality signal to Charter's Coldwater headend.

6. With respect to WTLJ's channel positioning request, we find that it has properly requested carriage on Channel 54 on Charter's Coldwater system, the same channel number on which it is broadcast over-the-air. Under the Commission's rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹⁸

IV. ORDERING CLAUSES

7. Accordingly **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by TCT of Michigan, Inc. **IS GRANTED**. Charter Communications **IS ORDERED** to commence carriage of television station WTLJ(TV) on Channel 54 of its cable system serving Coldwater, Michigan within 60 days from the date that station WTLJ delivers a good quality signal to Charter's principal headend.

8. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau

¹⁶ *Must Carry Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).

¹⁷ See, e.g., *CTV of Derry, Inc.*, 13 FCC Rcd 12484 (1998)(A Scala parareflector provided by station); *Montgomery Cablevision, L.P.*, 10 FCC Rcd 2732 (1995)(Antenna cut to frequency and pre-amplifier used); and *Greater Dayton Public Television*, 10 FCC Rcd 1055 (1995)(A 12.5dBm gain antenna and pre-amplifier provided by station).

¹⁸ 47 C.F.R. § 76.57; see *Must Carry Order*, 8 FCC Rcd at 2988.

¹⁹ 47 C.F.R. § 0.283.